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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,704	02/21/2006	Monilola Olayioye	DAVI186.004APC	6939
20995 7590 06/06/2008 KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614				
EXAMINER MONDESI, ROBERT B				
ART UNIT		PAPER NUMBER		
1652				
NOTIFICATION DATE		DELIVERY MODE		
06/06/2008		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

jcartee@kmob.com
eOAPilot@kmob.com

Office Action Summary

Application No.

10/538,704

Applicant(s)

OLAYIOYE ET AL.

Examiner

ROBERT B. MONDESI

Art Unit

1652

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on February 27, 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 26, 33-46 and 49-50 is/are pending in the application.
- 4a) Of the above claim(s) 35, 37-46 and 49-50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 26, 33, 34 and 36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

This Office action is in response to the amendment filed February 27, 2008.

Status of the claims

Claims 1-25, 27-32 and 47-48 have been canceled. **Claims 49-50** are new and have been added. **Claims 26, 33-46 and 49-50** are pending. **Claims 35, 37-46 and 49-50** are withdrawn for pertaining to nonelected subject matter. **Claims 26, 33-34 and 36** are presently under examination.

Newly submitted **claims 49-50** are directed to an invention that is independent or distinct from the invention originally claimed for the reasons: provided in the restriction requirement mailed April 18, 2007, see Group V.

Restriction requirement

This application contains **claims 35, 37-46 and 49-50** drawn to an invention nonelected with traverse in Paper filed June 25, 2007. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Withdrawal of Objection(s) and Rejection(s)

The objections and rejections not explicitly restated below are withdrawn due to applicants' response in amendment filed February 27, 2008.

Claim Rejections - 35 USC § 112

The rejection of **claims 26, 33-34 and 36** under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement is withdrawn due to applicants' amendment to the claims in amendment filed February 27, 2008.

The rejection of **claims 26, 33-34 and 36** under 35 U.S.C. 112, first paragraph, because of lack of enablement is withdrawn due to applicants' amendment to the claims in amendment filed February 27, 2008.

The rejection of **claims 26, 33-34 and 36** under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention is withdrawn due to applicants' amendment to the claims in amendment filed February 27, 2008.

New Objection(s) and Rejection(s)

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 26, 33-34 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Rosen et al., United States Patent Application Publication No. US 2002/0052308.

Rosen et al. disclose a nucleic acid sequence that is 100% identical to the nucleic acid sequence of SEQ ID NO:4 (see STIC alignment analysis attached to the instant Office Action and cited in the PTO-892).

Rosen et al. teach that the invention relates to newly identified tissue specific cancer associated polynucleotides and the polypeptides encoded by these polynucleotides herein collectively known as "cancer antigens," and to the complete gene sequences associated therewith and to the expression products thereof, as well as the use of such tissue specific cancer antigens for detection, prevention and treatment of tissue specific disorders, particularly the presence of cancer. This invention relates to the cancer antigens as well as vectors, host cells, antibodies directed to cancer antigens and recombinant and synthetic methods for producing the same. Also provided are diagnostic methods for diagnosing and treating, preventing and/or prognosing tissue specific disorders, including cancer, and therapeutic methods for treating such disorders. The invention further relates to screening methods for identifying agonists and antagonists of cancer antigens of the invention. The present invention further relates to methods and/or compositions for inhibiting the production and/or function of the polypeptides of the present invention (Abstract).

Thus Rosen et al. teach all the elements of **claim s 26, 33-34 and 36** and these claims are anticipated under 35 USC 102(b).

Conclusion

No claims are allowed

Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ROBERT B. MONDESI whose telephone number is (571)272-0956. The examiner can normally be reached on 9am-5pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nashed Nashaat can be reached on (571)272-0934. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1652

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert B Mondesi/
Primary Examiner
Art Unit 1652
May 30, 2008

GenCore version 6.2.1
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OM nucleic - nucleic search, using sw model

Run on: February 29, 2008, 15:26:43 ; Search time 24333 Seconds
(without alignments)
899.137 Million cell updates/sec

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Art Unit: 1652

Post-processing: Minimum Match 0%
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 Listing first 45 summaries

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Pred. No. is the number of results predicted by chance to have a score greater than or equal to the score of the result being printed, and is derived by analysis of the total score distribution.

SUMMARIES

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1	876	100.0	1235	3	US-09-925-301-143	Sequence 143, App

ALIGNMENTS

RESULT 1
 US-09-925-301-143
 ; Sequence 143, Application US/09925301
 ; Patent No. US20020052308A1
 ; GENERAL INFORMATION:

Art Unit: 1652

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; APPLICANT: Rosen et al.
; TITLE OF INVENTION: Nucleic Acids, Proteins and Antibodies
; FILE REFERENCE: PA106
; CURRENT APPLICATION NUMBER: US/09/925,301
; CURRENT FILING DATE: 2001-08-10
; PRIOR APPLICATION NUMBER: PCT/US00/05882
; PRIOR FILING DATE: 2000-03-08
; PRIOR APPLICATION NUMBER: 60/124,270
; PRIOR FILING DATE: 1999-03-12
; NUMBER OF SEQ ID NOS: 1694
; SOFTWARE: PatentIn Ver. 2.0
; SEQ ID NO 143
; LENGTH: 1235
; TYPE: DNA
; ORGANISM: Homo sapiens
US-09-925-301-143
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Matches 876;  Conservative 0;  Mismatches 0;  Indels 0;  Gaps
0;

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Art Unit: 1652

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